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**STATE OF DELAWARE**  
**BOARD OF FUNERAL SERVICES**

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<b>PUBLIC MEETING MINUTES:</b>	<b>BOARD OF FUNERAL SERVICES</b>
<b>MEETING DATE AND TIME:</b>	<b>Tuesday, July 28, 2015, 10:00 a.m.</b>
<b>PLACE:</b>	861 Silver Lake Boulevard, Dover, Delaware <b>Conference Room A</b> , second floor of the Cannon Building
<b>MINUTES APPROVED:</b>	September 22, 2015

**MEETING MINUTES**

**MEMBERS PRESENT**

S. Keith Parsell, Professional Member, President  
Duwayne Casini, Professional Member, Secretary  
Chad Chandler, Professional Member  
Bill Torbert, Professional Member  
Danna Levy, Public Member  
Jane Hovington, Public Member

**MEMBERS ABSENT**

Mary Byrd, Public Member

**DIVISION STAFF/DEPUTY ATTORNEY GENERAL**

Kevin Maloney, Deputy Attorney General  
Amanda McAtee, Administrative Specialist II

**OTHERS PRESENT**

Mr. Victor C. March, Sr. - President of the Maryland Board  
Mrs. Ruth Ann Arty- Executive Director of the Maryland Board  
McCrery & Harra Funeral Home  
Joshua Schoenberg  
Alison Parsell  
Bill Krien  
Andrew Parsell, President DSFDA, Parsell Funeral Homes  
Charlie Hastings  
Norm Shropshire, President of the Pennsylvania Funeral Directors Association (PFDA)  
Pam Zickafoose, Division of Professional Regulation  
Justen Wright

**CALL TO ORDER**

Mr. Parsell called the meeting to order at 10:00 a.m. He apologized for not extending condolences at the Board's June 30, 2015 meeting to Chad Chandler, a member of this board, and his family on the loss of his

mother in April, and to Sheryl Paquette, the Board's Administrative Specialist, on the loss of her father in June.

### **REVIEW AND APPROVAL OF MINUTES**

June 30, 2015

The Board reviewed the minutes of the June 30, 2015 meeting. Mr. Chandler made a motion, seconded by Mr. Casini, to approve the minutes as presented. By unanimous vote, the motion carried.

### **UNFINISHED BUSINESS**

Bennie Smith Funeral Home – temporary facility term

Mr. Parsell stated that about a year ago there was a fire at Mr. Smith's Millsboro location and he had requested use of a temporary location until the facility was rebuilt. Mr. Smith reported to the Board that the building itself was found to be unsalvageable and a new facility was under construction. He apologized in his correspondence for not informing the Board sooner. Mr. Parsell questioned the Board as to whether or not they wanted to extend the temporary facility term. After review and discussion, Ms. Hovington made a motion, seconded by Mr. Torbert, to extend the temporary facility term for twelve months. By unanimous vote, the motion carried.

### **NEW BUSINESS**

RATIFICATION OF LICENSURE – None

REVIEW OF RESIDENT INTERN REPORTS – None

### **REVIEW OF APPLICATIONS FOR LICENSURE**

Michael Rostocki, III -- Funeral Director Licensure

Mr. Casini told the Board that Mr. Rostocki's application stated that he had not been licensed since 2012 because he had not received a renewal notice from the Division. Ms. McAtee said that Mr. Rostocki was sent a renewal notice on June 22, 2012 and that Mr. Rostocki went online to renew his license. During the course of renewal he selected "no" to the question asking if he had completed the required continuing education credits for renewal. Ms. McAtee stated that since he had not indicated that he met the continuing education credits for renewal, his renewal was placed on hold, and he was notified to submit his continuing education information in order to lift the hold and renew his license. The Division never received such information and he was sent an expiration notice on September 4, 2012. The Division did not generate a renewal in 2014 because his license was not renewed in 2012. Mr. Casini stated that according to the statute under section 3111(e) he would need to provide proof of continuing education and complete the state exam. Mr. Maloney confirmed that Mr. Casini was correct; there was a lapsed license provision under the statute. Mr. Maloney read from the statute under section 3111(e):

§ 3111 (e) Notwithstanding subsection (b) of this section, in the event a funeral director, who was previously licensed in Delaware, and who allowed that funeral director's license to lapse for a period in excess of 12 months, is applying for licensure under this section, the Board shall grant a license to such applicant, subject, however, to completion of the continuing education requirements set forth in subsection (b) of this section; formal submission of a completed written application on forms provided by the Board; successful completion of the state law examination required by § 3105 of this title; and payment of a reinstatement fee established by the Division.

After review and discussion, Mr. Casini made a motion, seconded by Ms. Hovington, to table the funeral director license application of Michael Rostocki, III and request that he provide documentation of continuing education completion and evidence that he re-tested and received a passing score on the state board exam per the Board's statute under § 3111 (e). By unanimous vote, the motion carried.

Rostocki Funeral Home -- Funeral Establishment Permit

Mr. Chandler questioned how the Board could grant a funeral establishment permit without Mr. Rostocki holding an active funeral director license. Mr. Casini stated that Mr. Rostocki was listed on the application as the funeral director. Mr. Maloney stated that the funeral establishment permit application was premature according to the statute in section 3117(a)(2):

§ 3117 (a)(2) That the funeral establishment shall have in charge full time therein a person licensed in accordance with this chapter; provided however, that this paragraph shall not apply to funeral establishments maintained, operated or conducted prior to September 6, 1972.

After review and discussion, Mr. Chandler made a motion, seconded by Ms. Levy, to table the application until Mr. Rostocki met the requirements to hold an active funeral director license. By unanimous vote, the motion carried.

Ms. McAtee stated that she would send Mr. Rostocki correspondence of the Board's decision and that it would be sent to him using certified, first class, and electronic mail deliveries.

Krienen-Griffith Funeral Home (Wilmington) – Funeral Establishment Permit

Krienen-Griffith Funeral Home (New Castle) – Funeral Establishment Permit

Mr. Chandler stated that he found both applications to be in order but found it curious that these establishments had not held active licensure since 2002. Mr. Krienen was present at the meeting and he apologized to the Board. Mr. Krienen stated that he did not receive correspondence in the mail to signal his office to renew the permits. Ms. McAtee explained the renewal process and stated that prior to the year 2006 renewals were not done electronically and they were all paper applications. Ms. McAtee stated that it was on the licensee or permit holder to ensure that their license or permit was renewed before the expiration date.

Ms. Hovington questioned Mr. Krienen on how he discovered that his establishments were not actively permitted. Mr. Krienen stated that he discovered that he did not have active establishment permits during the Board's legislative sunset session period. After review and discussion, Mr. Chandler made a motion, seconded by Ms. Levy, to approve both funeral establishment permit applications for the Wilmington and New Castle locations of Krienen-Griffith Funeral Home. By unanimous vote, the motion carried.

REVIEW OF APPLICATION FOR CONTINUING EDUCATION APPROVAL

None

**COMPLAINT UPDATES AND CONSENT AGREEMENTS**

Complaint Updates

Complaint 27-06-14 (not assigned) Dismissed due to 'Insufficient Evidence'

Complaint 27-03-15 (not assigned) New Complaint

Complaint 27-04-15 (not assigned) New Complaint

Mr. Parsell reported the statuses of each complaint listed above.

**HEARING OFFICER RECOMMENDATIONS**

None

**CONSENT AGREEMENTS**

None

**CORRESPONDENCE**

None

**OTHER BUSINESS BEFORE THE BOARD** (for discussion only)

Discussion of Maryland Regulations with Maryland State Board Members – as they relate to

Delaware Licensees and Dual License holders

Mr. Parsell welcomed representatives of the Board of Morticians and Funeral Directors from the State of Maryland, President of the Maryland Board, Mr. Victor C. March, Sr. and Executive Director of the Maryland Board, Mrs. Ruth Ann Arty.

Mr. Parsell stated that the members of the Maryland Board had been invited in order to open a dialogue of understanding regarding many new rules and regulations that have been adopted by the Maryland Board that may have a direct linkage or impact upon Delaware Funeral Licensees who also hold and have held for many years various licenses issued by the Maryland Board.

Mr. Parsell stated that a mortician license was a license that covered both a funeral director and an embalmer so the difference was the funeral director was not licensed to practice embalming but a mortician was licensed to do both. In the past a courtesy card allowed a person not licensed by the State of Maryland to do certain practices in the state. Mr. Parsell questioned if that was still correct.

Ms. Arty stated that a courtesy card holder could sign a death certificate and perform a grave side service only. In order to perform a full funeral service they had to have a Maryland licensee present or hold a Maryland license themselves. Ms. Arty explained that with the passage of the new statute a courtesy card holder could still bring human remains into the State of Maryland but the removal of remains from the State of Maryland was no longer permitted. Ms. Arty stated that the number of courtesy card holders in the State of Maryland had sharply declined throughout the years and that they had a very small number of courtesy card holders remaining.

Ms. Arty stated that a transporter permit was required to remove remains from the State of Maryland. There was one exemption in the transport requirement; in that establishments licensed in Maryland were able to remove remains within the State of Maryland using their regular employees for their own establishments however, they could not make removals for other establishments in the state.

Mr. Casini questioned the vehicle inspection process for licensing. Ms. Arty stated that the vehicles were inspected by the Maryland Board on a regular basis at various locations.

Mr. Parsell questioned how a Delaware funeral director would know who they could call to remove remains for their establishment. It was the understanding of Mr. Parsell that the transportation into the State of Delaware from the State of Maryland had to be performed by someone registered in the State of Maryland. Mr. March stated that under the new transporter regulations the transporting of human remains could be done by a licensed establishment in Maryland for their own cases or by a licensed transport company. Mr. March explained that a Delaware funeral home could become a licensed transporter and could apply for a transporter license which would allow a Delaware firm to come into the State of Maryland and transport remains out of the State of Maryland. Currently the law permitted two different ways that the remains could be removed either by a licensed Maryland establishment for their own contracts or by the holder of an active Maryland transporter license.

Mr. Parsell stated that a small operator in the State of Delaware may only deal with a death in the borders of Maryland once every five years. Ms. Arty stated that in that circumstance the small Delaware operator could hire a licensed Maryland funeral home to make the initial removal and sign the death certificate. A licensed Maryland transporter could then be contracted in order to transport the remains into the State of Delaware. Ms. Arty stated that the laws governing remains being brought into the State of Maryland had not changed and that a transporter license was not required.

Ms. Hovington questioned if the State of Delaware had such strict regulations on other states regarding transport into the State of Delaware and did Delaware have any reciprocity agreements with the State of Maryland. Mr. Parsell stated that Maryland licensees could become licensed in the State of Delaware as long as the Maryland licensee met or exceeded Delaware licensure requirements.

Ms. Hovington stated that with the new Maryland regulations that the cost was going to fall on the family if a Delaware establishment had to hire a Maryland firm to assist with the remains. Mr. March stated that the cost was about \$175 per year to maintain a transporter permit and stated that it would most likely cost a lot more to hire another firm.

Mr. Chandler questioned if there were any other expenses associated with the transporter license. Ms. Arty stated that the transporter permit was \$350 for 1-3 transporters and was renewable every 2 years. The transporter license had a first time, one-time set up fee of \$40 per transporter registered.

Mr. Parsell questioned if a Delaware firm that employed a contractor that was employed on a 1099 tax basis would be acceptable to be included on their Maryland transporter license. Ms. Arty stated that what the

Delaware firm decided to do with their employees was up to them as an independent business decision and that a Delaware firm could employ a 1099 contract individual for their transport company.

Mr. Parsell questioned how the vehicle inspections were performed. Ms. Arty stated that vehicle inspections were completed in Maryland and that the Maryland Board had sent an inspector to locations along the Maryland-Delaware borders so that Delaware firms would not have to travel into to Baltimore, Maryland for inspection. Mr. Parsell questioned if all vehicles had to be inspected. Mr. March stated that each vehicle had to be inspected and had to display the Maryland inspection decal.

Mr. Parsell questioned what training the transporter had to complete in order to become a licensed Maryland transporter. Ms. Arty stated that the Maryland Board had conducted training on the Maryland Mortuary Transport Laws and the Human Dignity Act free of charge, and had sent out trainers into the state of Delaware and provided the class free of charge. The additional required training was that they had to have completed training on OSHA or MOSHA to include blood-borne pathogens and infection control. Proof of completion of all education requirements had to be provided with initial transporter application.

Mr. Parsell questioned if the Maryland Board was monitoring unlicensed practice. Ms. Arty stated that the Maryland Board was not currently issuing violations; however, the Maryland Board had an obligation to make sure people were complying with the new laws and regulations. Ms. Arty explained that Maryland medical examiners would be releasing remains to individuals that may not be licensed; however, the Maryland Board would be provided a list each month with the names of the individuals who picked up remains from the Maryland medical examiner's office. Ms. Arty stated that the Maryland Board was still in the process of making courtesy calls to unlicensed individuals to make them aware of the new laws and regulations and give them an opportunity to comply, at this time they were not immediately filing complaints and instead were providing education.

Mr. Chandler questioned how other states reacted to the regulation and law changes in Maryland. Ms. Arty stated that the District of Columbia and Virginia already had similar requirements. Ms. Arty stated that West Virginia and Pennsylvania were complying and the Maryland Board had already received a transport application from the State of Pennsylvania. Ms. Arty explained that the State of Pennsylvania was already reviewing their regulations regarding the transportation of human remains and had not spoken to the Maryland Board directly. Ms. Arty stated that the Maryland Board had already received transporter applications from Delaware residents and the first transport permit the State of Maryland issued was issued to a Delaware resident. It had now been one year since the regulations were finalized and three years since the statute had passed.

Mr. Casini questioned if Ms. Arty knew how many transporter licenses had been issued by the State of Maryland. Ms. Arty stated that they currently had 35 active transporter licenses.

Mr. Parsell questioned if the trigger event was whether or not a Maryland firm signed the death certificate. Ms. Arty stated that was correct.

Mr. Parsell stated that if a Delaware firm crossed into Maryland on a regular basis, the total impact cost would be \$350 for up to 3 transporters, plus \$40 per registered transporter, which was a one-time \$40 registry fee per transporter, for a total of \$470 for initial transporter licensure of 3 total transporters.

Ms. Arty stated that for initial licensure criminal background checks were required for all applicants and the cost would have to be paid by the applicant.

Mr. Torbert questioned if the applications were available online. Ms. Arty stated that the applications and information was available online on the Maryland Board's website.

Mr. Casini questioned if there were any circumstances in place right now where a Maryland Board representative would inspect a Delaware facility. Mr. Casini said he believed there was something in the Maryland law that stated a facility would be inspected if the body was stored out of state and then returned to the State of Maryland for burial. Ms. Arty stated that in the Maryland statute under the Human Dignity Act, if

the body was stored out of state and then returned to the State of Maryland for burial, then by invitation only the Maryland Board would come and inspect the Delaware facility. Ms. Arty agreed that the inspection provision was still in the Maryland statute.

Mr. Casini questioned if it was in the statute that the inspection was by invitation only. Ms. Arty stated that yes, it was by invitation only and that the Maryland Board was not currently enforcing that part of their statute.

Mr. Chandler questioned if all of the changes in the regulations and statute came about because of issues in the State of Maryland. Ms. Arty stated that the Human Dignity Act was actually created by a family that had the remains of a loved one mishandled. Ms. Arty explained that the changes were made for public protection and also establishment protection because in the past establishments were held liable for the actions of transporters. The biggest risk in handling human remains is posed with the transport of human remains with regard to injury or infection. Prior to the new law and regulations, the individuals that carried the most risk were the transporters and they were not required to be OSHA, blood-borne pathogen, or infection control trained. The transporters were not being covered by workman's compensation insurance, incidents of theft had occurred in homes, and the contracted funeral home was held liable for incidents of theft.

Mr. Chandler questioned if the State of Maryland still maintained a pre-need fund. Mr. March stated that the State of Maryland still maintained a pre-need fund and that each Maryland funeral establishment had to pay \$350 at each renewal for the family trust fund, which was for families who had lost their pre-need funds due to a funeral establishment's oversight. When the trust fund reached \$1 million then they would stop collecting additional trust fund amounts from Maryland licensees. Ms. Arty stated that to date, the State of Maryland had awarded 7 claims against the trust, of which 4 had been paid, and 3 were still pending. The fund currently had about \$890,000 and each claim would pay out between \$3,000 and \$10,000. If it was of major claimant status, the Maryland Board would pay out a percentage so the trust would not be completely wiped out. Ms. Arty added that many claims stemmed from the death of a funeral director and the pre-need funds were then tied up in the estate of the deceased funeral director.

Ms. Arty stated that the Maryland Board understood that they had made major changes to their laws and regulations and would continue to make themselves available for any additional training at any convenient time. The required Maryland Mortuary Transport Laws and the Human Dignity Act training was provided free of charge by the Maryland Board and was worth 2.5 CEUs in the State of Maryland.

Mr. Parsell thanked Ms. Arty and Mr. March for speaking to the Delaware Board and concluded that the Delaware Board would continue to review their current regulations and would decide if changes were required in order to become more aligned with some of the new Maryland laws and regulations.

### **PUBLIC COMMENT**

Mr. Josh Schoenberg from Schoenberg Funeral Chapel in Wilmington questioned the transport licensing fees and wanted to confirm that the \$350 fee covered up to 3 transporters and that there was an additional \$40 fee which was a one-time fee per transporter covered. Ms. Arty stated that was correct and the entity could pay the initial fee and renewal fee for their own transport company.

Mr. Schoenberg stated that the rationale for the changes was for public protection; however, the changes would be a burden to the public because the public would be incurring that additional cost for transport licensure. Ms. Arty stated that the family was paying for the removal anyway and she personally would not mind paying an additional fee if it meant that her loved one's remains would be properly transported. Ms. Arty believed that the majority of the public shared that same feeling.

Mr. Schoenberg questioned the inspection by invitation only and requested that the Delaware Board follow up on it to get a statement from the Maryland Board on their interpretation of it. Ms. Arty stated that when the Maryland Attorney General (AG) Office Representative met with the Maryland Board, the AG's interpretation was that the "by invitation" clause of the statute could be enforced by the Maryland Board and that the Maryland Board could very well prevail in its enforcement; however, the Maryland Board decided not to engage into this battle and was not enforcing this section of the Human Dignity Act. The rest of the Human Dignity Act was being enforced by the Maryland Board.

Mr. Charlie Hastings from Hastings Funeral Home questioned the transporter fees and if the fees were based on how many transporters they employed. Ms. Arty confirmed that the transporter fees were based on the number of transporters licensed and that the base fee only covered up to 3 transporters; however, a firm did not have to designate everyone employed on their staff as Maryland transporters.

Mr. Norm Shropshire, President of the Pennsylvania Funeral Directors Association (PFDA), questioned how the State of Maryland intended to enforce this new legislation. Mr. March stated that the governing body that oversaw hospitals and nursing homes would be adopting this legislation as well and they would be allowing only licensed transport companies and Maryland licensed funeral homes the right to receive and transport human remains. The Maryland medical examiner's office had been providing the Maryland Board a list of individuals that have received human remains from their offices. The Maryland Board had also established fines and penalties but was currently in an educational phase of enforcement.

Ms. Arty stated that the transportation of human remains was a major discussion at the last national conference where it came to light that many states agreed that most issues arose from this issue and that many state boards were looking to regulate it.

Mr. Parsell stated that the education needed to come first, and there were a lot of rumors and misunderstandings concerning the new Maryland laws and regulations. Mr. Parsell believed that there were a lot of people in both Maryland and Delaware that did not understand the new laws and regulations. Mr. Parsell felt that compromise could be found, the Delaware Board members would digest all of this information presented, and come back at the next scheduled meeting to discuss the feelings of the Delaware Board.

Mr. Parsell believed that this was the first time that the Delaware and Maryland Boards had gathered together for a one-on-one discussion in Delaware, and he appreciated the Maryland Board coming to the meeting and providing meaningful education and discussion.

#### **NEXT MEETING**

The next Board meeting will be held on Tuesday, September 22, 2015, at 10:00 a.m. in Conference Room B located on the second floor of the Cannon Building at 861 Silver Lake Boulevard, Dover, Delaware.

#### **ADJOURNMENT**

There being no further business, Mr. Chandler made a motion, seconded by Mr. Casini, to adjourn the meeting at 12:15 p.m. The motion to adjourn carried unanimously.

Respectfully submitted,



Amanda McAtee  
Administrative Specialist II

*The notes of this meeting are not intended to be a verbatim record of the topics that were presented or discussed. They are for the use of the Board members and the public in supplementing their personal notes and recall for presentations.*